

Regular Meeting

Agenda Item #	2
Meeting Date	23 July 2007
Prepared By	Sara Anne Daines HCD Director
Approved By	Barbara B. Matthews City Manager

Discussion Item	First Reading of Ordinance Amending <i>Takoma Park Code Chapter 6.20 Rent Stabilization</i>
Background	<p>The first reading of an ordinance amending the City's current rent stabilization law will be considered by the Council during its July 23 meeting.</p> <p>The more significant changes to the current law include the following:</p> <ul style="list-style-type: none"> Any unit on a platted lot which contains only one unit would be exempt from this law, regardless of their ownership. This would generally include single family houses and town houses. If adopted, rental units located within condominium facilities and two-unit owner occupied rental facilities would no longer be exempt from the requirements of rent stabilization. Registered accessory apartments would continue to be exempt. The Annual Rent Stabilization Allowance would be increased from 70% of the Consumer Price Index to 100% of the Consumer Price Index (All Urban Consumer all items, Washington-Baltimore). Capital Improvement and Hardship Rent Increases would be eliminated if the new law were adopted. In its place would be a "Fair Return Petition." Capital replacements would be considered as amortized operating expenses within the Fair Return Petition process rather than as a basis for separate rent adjustments as is currently provided by law. <p>During the July 16 public hearing and following worksession discussion, two concerns were raised by the Council regarding the proposed amendment: (1) The proposed indexing of the new fair return petitions, and (2) the impact of the amendment on two-unit, owner occupied rental facilities. Dr. Baar [in response to a suggestion from the Mayor that the index be raised from 50% to 70%] has provided additional information, included here as Exhibit A, which details the impact of the proposed increase. Following the Council meeting, staff was asked to investigate the impact of revising the amendment to exempt, upon application, smaller owner occupied rental facilities. The results of this investigation are detailed in Exhibit B.</p> <p>Minor revisions to the text have been made and clarifying language added since the initial presentation of the proposed amendment to the Council on July 16. These changes are noted in the text of the accompanying draft. Additional language expanding the listing of properties granted a partial exemption from rent stabilization to include 2 and 3-unit owner occupied rental facilities is also provided</p>

	<p>for Council consideration.</p> <p>The second reading of the proposed amendment is tentatively scheduled for July 30. If adopted, the ordinance would become effective December 1, 2007.</p>
Policy	<p>“To complete recodification of <i>City Code Chapter 6.20 Rent Stabilization</i>.”</p> <p><i>Affordable Housing Policy and Action Plan (July 2005)</i></p>
Fiscal Impact	N/A
Attachments	<ul style="list-style-type: none"> • Proposed Amendment to <i>Takoma Park Code Chapter 6.20 Rent Stabilization</i> (July 3, 2007 Draft with July 20, 2007 Revisions) • Exhibit A: Impacts on Allowable Rent of Alternate Indexing Ratios under Fair Return Standard • Exhibit B: Impact of Proposed Ordinance on Owners of Condominium Units and Smaller Owner Occupied Rental Facilities
Recommendation	To approve the first reading of the proposed ordinance.
Special Consideration	<p>The proposed ordinance does not provide for a utility surcharge considered by the Council. The research required to complete an analysis of the impact of recent increases in utility costs is underway and is scheduled to be completed this fall. The results of this analysis, and any recommended amendments to the rent stabilization law, will be presented to the Council for consideration at a later date.</p>

Chapter 6.20 RENT STABILIZATION*

6.20.010 Application of rent stabilization -- Scope, rent increases, notification requirements, owner-occupied condominiums, rental units not subject to rent stabilization as of July 1, 2007.

A. Application of Rent Stabilization.

The provisions of this chapter shall apply to all residential rental units except as provided ~~herein~~ Sections 6.20.020, 6.20.030 and 6.20.040.

B. Rents – Rent Increases, Frequency, and Notification Requirements.

1. Rent Increases.

Rent increases shall be limited to the rent increase amounts authorized by this chapter for regulated rental units.

2. Frequency of Rent Increases.

Rent increases authorized by this chapter for any regulated rental unit may be increased as authorized by this chapter.

3. Notice of Rent Increase.

Notification of any rent increase authorized by this chapter shall be provided in writing to the tenant at least two months prior to the date the rent increase is to take effect.

C. Reset of Base Rent for Owner-Occupied Condominiums.

When the owner or successive owners of a condominium unit occupies the unit for at least 24 consecutive months as his or her principal residence, then the owner may charge market rent for the unit when the owner next rents the unit to a tenant. The rent the owner charges the tenant shall establish the base rent for the unit until the owner again occupies the unit for at least 24 consecutive months.

D. Establishment of Base Rent for Rental Units Not Subject to Rent Stabilization on July 1, 2007.

For rental units that were not subject to rent stabilization on July 1, 2007, that become subject to rent stabilization pursuant to Ordinance No. 2007-40, the base rent shall be the monthly rent charged for the unit when the unit is first rented to a tenant after July 1, 2007.

Introduced by:

First Reading:

Second Reading:

Effective Date:

CITY OF TAKOMA PARK, MARYLAND

ORDINANCE NO. 2007-

Amending Takoma Park City Code Chapter 6.20 Rent Stabilization

WHEREAS, the preservation of quality, affordable rental housing for community residents has been a long standing a priority of the Takoma Park City Council; and

WHEREAS, the City's rent stabilization law, enacted in 1980, is one component of the broader affordable housing programming supported by the Council; and

WHEREAS, the Council has conducted an extensive review of its rent stabilization laws, soliciting input from local landlords, tenants, affordable housing providers, and experts in the affordable housing field; and

WHEREAS, the Council wishes to continue to protect tenants from unwarranted rent increases, while allowing rent levels which provide landlords with a fair return;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, that

Section I

Effective December 1, 2007 Title 6, Housing, Chapter 6.20 of the *Takoma Park Code* is amended to read as follows:

6.20.020 Buildings exempted from rent stabilization without application for exemption.

A. Scope of Exemptions.

The provisions of this chapter shall not be applicable to the following:

1. Any unit in a licensed facility, the primary purpose of which is the diagnosis, cure, mitigation and treatment of illnesses;
2. Any unit in a facility owned or leased by an organization exempt from federal income taxes pursuant to Section 501(c)(3) of the Internal Revenue Code, the primary purpose of which is to provide temporary sanctuary or shelter for qualified clients, provided that the organization has notified the clients residing in the facility of the temporary nature of their housing at the inception of their residence;
3. Any owner-occupied group house;
4. Religious facilities such as churches, synagogues, parsonages, rectories, convents and parish homes;
5. Transient facilities such as hotels, motels, tourist homes, and bed and breakfast facilities; and
6. School dormitories.

6.20.030 Rental facilities granted partial exemption from rent stabilization without application for exemption.

A. Scope of Exemptions.

The provisions of this chapter shall not be applicable to the following rental facilities except as provided in paragraph B and C of this section:

1. Any building on ~~a parcel of land which~~ a lot that -contains only one unit; and
2. Any accessory apartment for which the Montgomery County Planning Board has granted a special exception.

B. Frequency of Rent Increases.

The rents for rental facilities and rental units described in paragraph A of this section may be increased only once within a twelve month period.

C. Notification Requirements.

Notification of any rent increase for rental units described in paragraph A of this section shall be provided in writing to the tenant at least two months prior to the date the rent increase is to take effect.

6.20.040 Rental facilities and rental units exempt from rent stabilization pursuant to an application for a grant of exemption.

A. Grant of Exemption.

The Department shall, upon application of the owner, grant an exemption from this chapter for the following rental units and rental facilities:

1. Rental units leased to tenants assisted under federal Tenant Based Assistance Programs under 42 U.S.C. § § 1437f and 11403 et. seq. or similar federally funded rent subsidy program. However, this exemption shall apply only for so long as the rent demanded does not exceed the authorized Payment Standard, which, for purposes of this subsection, is the maximum monthly rental assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Montgomery County Housing Opportunities Commission or successor agency.
2. Any rental facility that is subject to a regulatory agreement with a governmental agency that controls the rent levels of one or more rental units so that they are available only to low and moderate income tenants.
3. Newly constructed rental units. For a period of five years after the issuance of a rental license, any newly constructed rental units first offered for rent after July 1, 2006.
 - a. Newly constructed rental unit shall mean any rental unit constructed that results in a net gain in the number of rental units at a property over the number of rental units at the property as of July 1, 2006, plus any rental units already added to the property, provided that the size of an existing rental unit or the indoor common areas of the rental facility is not reduced. The reconfiguration, renovation, change in description, or change in identification of a rental unit shall not result in a newly constructed rental unit.
 - b. Replacement rental units not exempt.
 - i. The maximum allowable rents applicable to pre-existing rental units shall be applicable to rental units that replace those units.
 - ii. A rental unit is a replacement rental unit unless the unit is a newly constructed rental unit as defined in this paragraph A.3.a of this section.

- iii. If a replacement rental unit is smaller than the unit it replaces, the maximum allowable rent for the replacement unit shall be reduced by a percentage equal to the reduction in size of the unit.

4. All rental units in a building with 2 or 3 dwelling units when the owner occupies one or more of the units as his or her principal residence, provided that the owner occupancy by the current owner or successive owners has been continuous and bona fide for a period of at least two years at the time a petition for an exemption is filed.

B. Termination of Exemption.

1. Exemptions granted pursuant to paragraph A.1 of this section shall expire after one year or when the conditions entitling the facility to an exemption cease to exist, whichever shall first occur. The exemptions are renewable annually upon re-application. Upon the termination of an exemption, the rental unit shall be subject all of the provisions of this chapter.
2. Exemptions granted pursuant to paragraph A.2 of this section shall expire upon the termination of the agreement with the governmental agency entitling the rental facility to the exemption.

C. Rents upon Termination of Exemption.

1. For rental facilities and rental units receiving an exemption pursuant to paragraphs A.1 and A.2 of this section, upon the termination of the exemption, the base rent for the units and the reference point from which the rent ceiling shall be adjusted in accordance with Section 06.20.050 shall be the maximum allowable rent for each unit at the time the exemption commenced plus the annual rent stabilization allowance for each year that the unit was exempt.
2. For rental facilities and rental units receiving an exemption pursuant to paragraphs A.3 and A.4 of this section, upon the termination of the exemption, the base rent for the units and the reference point from which the rent ceiling shall be adjusted in accordance with Section 06.20.050 shall be the rent set forth in the most recent annual rent report for each unit preceding the expiration of the exemption.

D. Frequency of Rent Increases.

The rents of occupied rental units exempt from rent stabilization under this section may be increased once within any twelve month period.

E. Notice of Rent Increases.

For rental units receiving an exemption pursuant to paragraphs A.2, and A.3, and A.4 of this section, a landlord shall not increase or attempt to increase the rent for any rental unit

without having first given the tenant living therein at least two months' written notice of the increase.

6.20.050 Annual rent increases.

A. Annual Rent Stabilization Allowance.

1. At any point during any twelve month period, commencing on July 1 of each year, the rent of a unit may be increased over the rent charged as of June 30 by the percentage increase in the Consumer Price Index. This increase shall be measured by the percentage increase in the Consumer Price Index-All Urban Consumers all items, Washington-Baltimore (Series ID: CUURA311SAO) from March in the preceding year to March in the current year. The CPI shall be the CPI published as of March in each year.
2. Rent increases which are permitted pursuant to this section but are not implemented may be "banked" in accordance with Section 6.20.060 of this chapter.

B. Frequency of Rent Increases for Occupied Rental Units.

1. Only one rent increase pursuant to paragraph A.1 of this section shall be permitted within a twelve month period.
2. During the pendency of a fair return petition to increase rents above the rent stabilization allowance, rent increases up to the rent stabilization allowance may be taken in accordance with paragraph B.1 of this section. If an additional rent increase pursuant to a petition is subsequently approved by the Commission, the rent increase may be taken pursuant to the terms and the conditions of the Commission's administrative decision and final order.

C. Frequency of Rent Increases for Vacant Rental Units.

1. Rent increases for vacant rental units may be taken prior to the leasing of the rental unit in accordance with paragraphs A.1 and A.2 of this section.

D. Notice of Annual Rent Increases.

1. A landlord shall not increase or attempt to increase the rent for any occupied rental unit without having first given the tenant living therein at least two months' written notice of the increase, except in such a case where a rent escalator clause as provided in Section 6.20.070 of this chapter is contained within the lease.
 - a. If, during the pendency of a notice of a rent increase, the rent stabilization allowance is raised or lowered by the City, a landlord may charge rent up to the rent stabilization allowance in effect on the date the notice was given.

- b. In any case where a rent escalator clause is contained within the lease, written notice of the rent increase must be given to the tenant not less than one month or more than two months prior to the effective date of the rent increase in accordance with Section 6.20.070(B) of this chapter.
2. Notice of a rent increase shall be in the form and manner prescribed by Department regulations.

6.20.060. “Banking” of authorized annual rent increases

A. Banking of Unused Rent Stabilization Allowances Authorized After 1992.

Notwithstanding the provisions of Section 6.20.050, a landlord may increase the rent for a vacant rental unit by the actual dollar amount of any annual rent stabilization allowances which were not charged to the tenant vacating the rental unit (hereinafter "unused rent stabilization increases"). Such increase may be taken if the rental unit became vacant as a result of a voluntary termination of the tenancy by the tenant or a termination of the tenancy by the landlord for cause. This rent increase may be in addition to any rent stabilization allowance increase which the landlord may impose on or after 12 months from the date of the last rent stabilization allowance increase for that rental unit.

B. Banking of Unused Rent Stabilization Allowances Authorized Prior to 1992.

- a. Before a landlord may increase the rent for a vacant rental unit by the amount of any unused rent stabilization increases for any year or years prior to February 1, 1992, the landlord must submit verifiable documentation to the Department showing that the unused rent stabilization increases were not previously charged to the rental unit. Examples of verifiable documentation are rent ledgers, copies of leases, and rent reports.
- b. The Department must approve such documentation in writing before the landlord may increase the rent for a vacant rental unit by the amount of any unused rent stabilization increases for any year or years prior to February 1, 1992. The required documentation must be submitted 60 days in advance of the date of the proposed rent increase and must include the name and contact information of the tenant vacating the affected unit

6.20.070 Rent escalator clauses.

A. Rent Increases Permitted by Rent Escalator Clause.

For occupied rental units subject to the provisions of this chapter, a landlord may incorporate a rent escalator clause into the lease providing for a rent increase to take effect on or after twelve months from the date of the last rent increase for that rental unit. The rent escalator

clause may provide for a rent increase not to exceed the annual rent increase allowance in effect at the time the rent increase is taken and/or the rent increase granted by the Commission pursuant to a fair return petition.

B. Notification of Rent Increase.

No such rent increase shall take effect as a result of a rent escalator clause without the landlord having first given the tenant at least one month, but no more than two months written notice of the rent increase prior to the effective date of the rent increase. Such notice shall be in the form prescribed by Department regulations and shall be provided in addition to any notice of rent increase provided in the lease.

6.20.080 Annual reporting requirements.

A. Reporting Requirements.

On or before September 30 of each year, each landlord shall complete and submit to the Department a rent report for the twelve month period ending on the preceding June 30 on a form provided by and in the manner prescribed by Department regulations.

B. Penalty for Failure to Comply with Reporting Requirements.

Failure to file a complete or accurate rent report by September 30 of each year shall constitute a violation of this chapter unless an extension of time for good cause is granted by the Department.

6.20.090 Rent increases pursuant to a fair return petition.

A. Fair Return Rent Increase.

Landlords have a right to petition for a rent increase in order to obtain a fair return. A fair return rent increase is intended to protect tenants from unwarranted rent increases, while allowing rent levels which provide landlords with a fair return. ~~as determined by the Commission and defined herein this section.~~

B. Standards for Rent Increases Pursuant to a Fair Return Petition.

1. "Fair Return" is defined as "Base Year" "Net Operating Income" adjusted by 50% of the percentage increase in the Consumer Price Index (CPI) from the Base Year until 2007, and 100% of the percentage increase in the CPI since 2007.

2. “Base Year” The landlord may select any of the following as the base year when petitioning for a fair return rent increase:
 - a. 1979, unless the property contains four or fewer rental units.
 - b. 1987, if the property contains four or fewer rental units.
 - c. 1990
 - d. 2000
3. “Current Year” shall either be the calendar year or the fiscal year (July 1-June 30) immediately preceding the date that the application is filed.
4. “Current Year CPI” If the current year is a calendar year, the current year CPI shall be the Annual CPI for that year. If the current year is a fiscal year, the current year CPI shall be the CPI for December within the twelve month period including the fiscal year.
5. “Net Operating Income” equals “Gross Income” minus “Operating Expenses”.
6. “Base Year Net Operating Income” may be calculated, at the landlord’s option, to equal 40% of the gross income of the rental facility in 1990.
7. “Gross Income” is the annual scheduled rental income for the property based on the rents and fees (other than fees that are reimbursed by the tenants) the landlord was permitted to charge at the time of the application.
8. “Operating Expenses” shall include all reasonable operating and maintenance expenses including but not limited to:
 - a. Utilities paid by the landlord, unless these costs are passed through to the tenants;
 - b. Administrative expenses, such as advertising, legal fees, accounting fees, etc;
 - c. Management fees, whether performed by the landlord or a property management firm;

It shall be presumed that management fees increased by the percentage increase in the CPI between the base year and the current year, unless the level of management services either increased or decreased during this period. Management fees shall not exceed 6% of gross income unless the landlord demonstrates by a preponderance of the evidence that a higher percentage is reasonable.
 - d. Payroll;
 - e. Amortized cost of capital improvements;

An interest allowance shall be allowed on the cost of amortized capital expenses; the allowance shall be equal to ~~the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments, at an interest rate equal to the Federal Reserve Board bank prime loan rate as of the date of the initial submission of the petition plus 2% per annum. the “average rate” for thirty year fixed rate mortgages, plus two percent. The “average rate” shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) prime interest rate last published by _____ as of the date of the initial submission of the petition.~~

- f. ~~Maintenance related material and labor costs, including \$~~self-labor costs computed in accordance with the regulations adopted pursuant to ~~—this section.~~;
- g. Property taxes;
- h. Licenses, government fees and other assessments;
- i. Insurance costs;
- j. Reasonable operating and maintenance expenses do not include the following:
 - 1. Expenses for which the landlord has been or will be reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments or any other method;
 - 2. Payments made for mortgage expenses, either principal or interest;
 - 3. Fines from noncompliance with Housing Code violations or COLTA Orders;
 - 4. Damages paid to tenants as ordered by COLTA or the courts;
 - 5. Depreciation;
 - 6. Late fees or service penalties imposed by utility companies, lenders or other entities providing goods or services to the landlord or the rental facility;
 - 7. Membership fees in organizations established to influence legislation and regulations;
 - 8. Contributions to lobbying efforts;
 - 9. Contributions for legal fees in the prosecution of class-action cases;
 - 10. Political contributions for candidates for office;

11. Any expense for which the tenant has lawfully paid directly or indirectly;
 12. Attorney's fees charged for services connected with counseling or litigation related to actions brought by the City under City regulations or Title 6, Housing, of this Code, as amended. This provision shall apply unless the landlord has prevailed in such an action brought by the City;
 13. Additional, expenses incurred as a result of unreasonably deferred maintenance; and
 14. Any expense incurred in conjunction with the purchase, sale, or financing of the rental facility, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.
- k. When an expense amount for a particular year is not a reasonable projection of ongoing or future expenditures for that item, said expense shall be averaged with other expense levels for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses.

C. Rent Increase Petition Based on Fair Return Standard.

1. Form of Petition.

Whenever a landlord proposes a rent increase of more than the amount permitted by Section 6.20.050 of this chapter, the landlord shall file a petition with the Commission on a form provided by the Department.

2. Required Submission of Income and Expense Information.

The landlord shall be required to submit income and expense information for the two years prior to the current year with the petition.

3. Petition Restrictions.

~~a. Limitation on the Number of Petitions that may be Filed. Petitions filed pursuant to this section must address an entire rental facility.~~

~~Only one petition for a fair return rent increase shall be filed for a rental facility within any twelve month period unless the Commission finds that exceptional circumstances justify consideration of a second petition within a twelve month period.~~

~~b. Consolidation of Petitions. The landlord filing a petition must own the rental facility for the entire Current Year.~~

~~A petition for a single rental facility must consolidate all requests for rent increases for all of the units within the rental facility that are made within prior twelve month period, unless the Commission finds that there are exceptional circumstances which justify separate petitions within the twelve month period.~~

4. Adjustments to Petition – Base Year Net Operating Income.

a. Adjustment of Base Year Net Operating Income by Commission.

It may be determined that the Base Year Net Operating Income yielded other than a fair return, in which case the base year Net Operating Income may be adjusted. In order to adjust the Base Year Net Operating Income, the Commission must make at least one of the following findings:

1. Base Year Net Operating Income was abnormally low due to one of the following factors:
 - A. The landlord made substantial capital improvements which were not reflected in the base year rents and the landlord did not obtain a rent adjustment for these capital improvements;
 - B. Substantial repairs were made due to exceptional circumstances; or
 - C. Other expenses were unreasonably high, notwithstanding prudent business practice.
2. Base Year Rents did not reflect market transaction(s), due to one or more of the following types of circumstances:
 - A. There was a special relationship between the landlord and tenant resulting in abnormally low rent charges (such as a family relationship);
 - B. The rents had not been increased for five years preceding the base year;
 - C. The tenant lawfully assumed maintenance responsibilities in exchange for low rent increases or no rent increases; or
 - D. Other special circumstances which establish that the rent was not set as the result of an arms-length transaction.

b. Establishment of a New Base Year Net Operating Income – Prior Year Petitions.

The net operating income, income, and expenses, determined to be fair and reasonable pursuant to a prior petition for a fair return rent increase, shall constitute the base year income, expenses, and net operating income in the new petition.

5. Consideration of Fair Return Petition by Commission.

a. Issuance of a Decision by the Commission.

The Commission shall, in good faith, endeavor to issue its preliminary administrative decision ruling on the request within 90 days of the review or hearing on the petition. Upon its determination of the rent increase to be granted to the landlord, the Commission shall issue a decision in accordance with Section 6.24.120 of this chapter and furnish a copyies of the decision to the landlord.

b. Rejection of Petition.

1. The Commission shall not consider the landlord's fair return petition:

- A. Until the properly completed petition form, including required supporting documentation, has been submitted to the Commission;
- B. When the landlord has not properly registered the rental property with the City and/or when the landlord has outstanding fees or fines with the Department;
- C. When the landlord has not filed required rent reports for the 3 years prior to the filing date of the petition with the Department, provided that the Commission may, at its discretion, waive the above requirement for good cause shown;
- D. When the landlord has failed to comply with a final order of the Commission concerning any rental unit owned by the landlord in the City. However, the failure to comply with an order of the Commission shall not constitute a basis to decline to consider the landlord's request if the order has been appealed to the Circuit Court and no decision has been rendered on appeal.

2. If the Commission declines to consider the landlord's request it shall provide a written explanation for its action.

6. Ceiling on Fair Return Adjustments.

a. Fair Return Rent Increases on Occupied Rental Units.

If, after the Commission's calculations, rent increases greater than 15% over the increases authorized pursuant to the rent stabilization allowance are necessary to result in the increases approved by the Commission pursuant to paragraph B of this section, the necessary increases shall be phased-in over a term of more than one year until the full increases awarded by the Commission have been taken. If a landlord's required rent increase is phased-in over the term of more than one year, the subsequent rent increases may be in addition to an increase within the rent stabilization allowance in effect in subsequent years.

b. Fair Return Rent Increases on Vacant Rental Units.

If the Commission determines that a rental unit requiring an increase of more than 15% is vacant or if the unit becomes vacant before the required rent increase has been taken in full, the Commission shall allow the required increase for that unit to be taken in one year or upon the vacancy of that unit, provided the unit became vacant as a result of a voluntary termination by the tenant or a termination of the tenancy by the landlord for cause.

7. Notification Requirements.

a. Notice of Petition for a Rent Increase.

The landlord shall provide written notification to each tenant affected by a proposed rent increase within one week after the filing date of the petition. Such notification shall include a copy of the petition form and a listing of all requested rent increases.

b. Notice of a Rent Increase Granted Pursuant to a Rent Increase Petition.

The landlord shall provide written notice to each affected tenant of the rent increase which has been authorized by the Commission, no less than two months prior to the date the proposed increase is to take effect. Said increase shall be contingent on the decision of the Commission becoming final in accordance with Section 6.24.120 and 6.24.130 of this chapter.

8. Rollbacks - Bad Faith Fair Return Petitions.

a. Authority to Require Rollback.

If, upon consideration of a fair return petition, the Commission finds that the adjusted base year net operating income included in the petition is less than the landlord's actual petition year net operating income and the fair return petition was filed in bad faith, the Commission may require the landlord to roll back the rents changed on the rental units covered by the petition to result in a net operating income equal to the adjusted base year net operating income.

b. Purpose of Rollbacks.

The purpose of the rollback provision in this subsection is to ensure that fair return petitions are filed in good faith, that the landlord reviews the records of the rental property for which rent increases are sought to ensure that a rent increase is justified under this section and to balance both the tenant and the landlord interests in each petition to increase rents above the rent stabilization allowance.

c. Definition of Bad Faith.

1. Bad faith can be found, but is not limited to, instances in which the landlord:

- A. listed expenses for repairs or services never performed;
- B. materially misrepresented expenses claimed;
- C. knowingly filed a false rent report, in whole or in part; or
- D. acted in some manner which is a clear abuse of the petition process.

2. The following shall not constitute bad faith under this provision:

- A. Miscalculations and simple mathematical errors; or
- B. Claims for expenses or other items which are not specifically addressed in this section and which the Commission disallowed, but which could plausibly have fallen within this section.

d. Determination of Bad Faith by Commission

The Commission shall verify the information upon which it makes its findings of bad faith and shall issue a decision clearly stating the basis for its finding. The landlords shall be required to notify all tenants affected by the rent rollback, and, if the landlord was permitted to increase rents by the rent stabilization allowance pending a decision on the fair return petition, all rent increases so collected shall be refunded to the affected tenants within 30 days. If the landlord fails to roll back the rents or fails to refund the rent increases collected, the affected tenants may begin paying the rolled-back rent or may deduct any rent refunds or rollbacks owed the tenants in accordance with paragraph a of this section.

9. Scope of Commission Authority in Setting Rents.

Notwithstanding any other provision of this ordinance or regulations instituted pursuant to this ordinance, the Commission shall be authorized to take into account any factors

which it is required to consider by law and grant whatever rent increase is constitutionally required in order to yield a fair return.

10. Burden of Proof.

The landlord shall have the burden of proof in demonstrating that a rent increase should be authorized pursuant to this Section.

Section II

Section 6.20.060.D, Petitions for Increases for Capital Improvements, of the *Takoma Park Code* is repealed immediately.

If work on a capital improvement was:

- (1) completed after January 1, 2007, or
- (2) commenced but not completed prior to July 16, 2007, or
- (3) the landlord made a substantial investment in arranging for the capital improvement in 2007 prior to July 16, 2007,

the landlord may petition for a rent increase to cover the cost of the capital improvement in accordance with the rent stabilization ordinance and regulations in effect as of July 16, 2007.

Adopted this _____ day of _____, 2007, by roll-call vote as follows:

Aye:

Nay:

Absent:

Abstain:

Note: Additions to the proposed statutory language presented to the Council on July 16, 2007, are underlined and deletions to that language are in ~~strike out~~.

Impacts on Allowable Rent of Alternate Indexing Ratios under Fair Return Standard

50% increase in CPI since base year

Assumptions:

1. net operating income = 40% of gross income in base year
2. 50% increase in CPI since base year
3. rents have increased by 35% since base year
4. operating expenses have increased at same rate as CPI
5. 25 unit building

	Base Year Rent	Allowable Rent Under Annual Rent Stabilization Allowance	Allowable Rent Under Fair Return Standard			
			Indexing Ratio	50%	70%	100%
Operating Expenses	120000		Operating Expenses	180000	180000	180000
Net Operating Income	80000		Fair Net Operating Income	100000	108000	120000
				(125% of \$80000)	(135% of \$80000)	(150% of \$80000)
Gross Income	200000	270000	Allowable Gross Income	280000	288000	300000
			(oper exp + fair noi)			
Monthly Rent/Unit	667	900	Monthly Rent/Unit	933	960	1000
		(35% increase over base year, see notes below)	allowable gross income/25 units/12 months			

Notes:

- Units with capital improvement increases may have higher rents
- Units that have not implemented all annual increases may have lower rents

Comments:

1. If in fact a property had a net operating income/gross income ratio that was higher than 40% in the base year, it would be entitled to a smaller increase. The City does not have data on prevailing net operating income/gross income ratios in 1990, which is used as a base year.
2. capital improvement rent increases may partially or fully offset the increases that an owner would be entitled to under the fair return formula

Condominium Facilities Conversion and Planned Renovations Completed				
Ward	Condominium Facility	Total Units	Owner Occupied SDAT July 2007	Units presumed available for Sale or for Rent
1	407 Tulip Avenue	12	9	3
2	7209 Flower Avenue	6	2	4
2	7219 Flower Avenue	12	6	6
2	7300 Flower Avenue	6	0	6
2	22-24 Manor Circle	22	14	8
3	116 Lee Avenue	56	29	27
4	111 Lee Avenue	46	10	36
4	7611 Maple Avenue	74	68	6
4	7525-27 Maple Avenue	8	7	1
5	8308 Flower Avenue	31	28	3
5	609 Hudson Avenue	12	8	4
Total Units		285	181	104

Condominium Facilities Conversion and Planned Renovations Underway		
Ward	Condominium Facility	Units
2	717 Sligo Creek Parkway	12
4	7716-7732 Maple Avenue	20
5	719-721 Erie Avenue	16
6	7333 New Hampshire Ave	232
Total Units		280

Owner Occupied Rental Facilities by Size of Facility and Ward							
Ward	Two-Unit Rental Facility			Three-Unit Rental Facilities		Four-Unit Rental Facilities	
	Registered Accessory Unit	Owner Occupied	Total 2-Unit Buildings	Owner Occupied	Total 3-Unit Buildings	Owner Occupied	Total 4-Unit Buildings
1	11	8	21	2	21	4	20
2	3	11	28	3	18	0	16
3	12	11	42	4	18	1	16
4	1	0	1	0	0	0	0
5	4	13	50	8	90	0	24
6	1	0	2	0	18	2	64
City-wide	32	43	144	17	165	7	140

Source: Montgomery County Housing and Community Affairs - Accessory Apartment Registry
City of Takoma Park Annual Rent Reports (September 2006)
City of Takoma Park Rental Licensing Property Files

Impact of Proposed Amendments on Licensed Owner Occupied Rental Facilities

Type of Rental Facility	Registered Accessory Unit	Owner Occupied 2-Unit (Duplex) Rental Facility	Owner Occupied 3-Unit Rental Facility	Owner Occupied 4-Unit Rental Facility
Current Rent Stabilization Status	<p>Current rent stabilization law does not apply.</p> <p>Rent increases for occupied units are however limited to once every 12 months.</p>	<p>Current rent stabilization law does not apply.</p> <p>Rent increases for occupied units are however limited to once every 12 months.</p>	Currently subject to requirements of rent stabilization law.	Currently subject to requirements of rent stabilization law.
Proposed Amendment	Accessory unit would continue to be partially exempt from the requirements of rent stabilization law.	Rental unit would be regulated under rent stabilization law as property is not a registered accessory unit	No change.	No change.